

DEPARTMENT OF STATE REVENUE

AUDIT-GRAM NUMBER IR-026

May 7, 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Freight Charges – Sales Tax & Gross Income Tax [FN 1]

Authority: IC 6-2.1-2-1(b)(2); IC 6-2.5-4-1(e); IC 26-1-1 to 9; 45 IAC 2.2-4-3; 45 IAC 1-1-33; 45 IAC 1.1-2-5(c) [1999]; Comm. Dir. #21; Comm. Dir. #22; Comm. Dir. #23; *Martin Marietta Corp.* Ind. Ct. App., 1979

IC 6-2.1-2-1. Definition "Selling at retail"...

....

(b)(2) [S]elling at retail includes only:

(A) The price of the property transferred... and

(B) Any bona fide charges separately stated on the records of the transferor... for... delivery... before the... property is delivered to the transferee...

[1981]

IC 6-2.5-4-1 Selling at retail...

....

(e) [I]ncome received from selling at retail is only taxable... to the extent... (it)... represents:

(1) the price of the property transferred... and

(2) ...any bona fide charges... for ... delivery... in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

[1980]

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

[Effective March 18, 2004]

IC 6-2.5-1-5 "Gross retail income" defined...

(a) ... "gross retail income" means gross receipts....without any deduction for:

....

(4) delivery charges;

[Effective January 1, 2004]

....

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of the property, including, but not limited to transportation, shipping, postage, handling, crating, and packing.

[Effective March 18, 2004]

I. GENERAL STATEMENT

For Gross Income Tax purposes prior to January 1, 2003, the sale of tangible personal property is subject to tax at the low rate. The sale of service is subject to tax at the high rate. Transactions which include both the sale of tangible personal property and the provision of a service must be analyzed to determine whether the service has been performed prior to or after transfer.

For Sales Tax purposes, prior to January 1, 2004, services performed prior to transfer of the property are subject to tax. Services performed after transfer of the property are not subject to tax.

Effective January 1, 2004, all charges for delivery, including transportation, shipping, postage, handling, crating and packing, are subject to sales tax regardless of shipping terms.

II. TAXABILITY OF FREIGHT CHARGES – PRIOR TO JANUARY 1, 2004

A. Freight Charge, “F.O.B. Destination”

1. Sales Tax – Any freight service charge is subject to Sales Tax.
2. Gross Income Tax – Subject to Gross Income Tax at the low rate.

B. Freight Charge, “F.O.B. Origin”

1. Sales Tax – Any freight service charge is not subject to Sales Tax.
2. Gross Income Tax – Subject to Gross Income Tax at the high rate.

C. Freight Charge, F.O.B. Point Unknown

If the place of delivery of the goods is unknown or ambiguous, the F.O.B. point is assumed by law [FN 2] to be the seller's place of business or “F.O.B. origin.”

D. “Shipping and Handling”

Shipping and handling are additional charges made by a seller to compensate them for costs associated with preparing an item for shipment and shipment to the purchaser.

1. Sales Tax – The charge is subject to Sales Tax.
2. Gross Income Tax – Subject to Gross Income Tax at the low rate.

E. Delivery by Seller's Own Conveyance

Freight charges incurred for delivery in the seller's own conveyance are subject to the collection of sales tax. [FN 3] Freight charges for delivery made by common carrier should be evaluated according to F.O.B. designation.

F. Prepaid Freight

1. A freight charge stated as “prepaid” means the property is sold “F.O.B.” origin and delivery is the responsibility of the seller only as an agent for buyer. Either with or without buyer's direction, seller agrees to negotiate, transact, and pay for the necessary freight service to deliver the buyer's property to the buyer's location provided the seller is reimbursed for the cost.

- a. Sales Tax – The prepaid charge is not subject to Sales Tax.
- b. Gross Income Tax – The reimbursement is not taxable to the seller.

2. If the stated charge for “Prepaid Freight” significantly [FN 4] exceeds the actual charge for freight incurred by the seller, the entire charge shall be treated as the seller's delivery service charge prior to transfer.

G. Services Performed at the Delivery Point

Taxability of the seller's charge for services performed at the delivery point [FN 5] will depend upon that point in time at which the property transfers as explained above.

III. POLICY CHANGES

A. Gross Income Tax: The Gross Income Tax was repealed effective January 1, 2003.

B. Sales Tax: Under IC 6-2.5-1-5(b)(4), effective January 1, 2004, delivery charges are defined to mean "...charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing." Delivery charges are subject to sales tax if:

1. the property is sold;
2. the property is taxable to the purchaser; and,
3. delivery is made by the seller or on behalf of the seller.

The statutory changes made in IC 6-2.5-4-1(e), effective March 18, 2004, have rendered the Tax Court decision in *Cowden and Sons Trucking, Inc.* invalid. Transportation companies [FN 6] will be required to register as retail merchants and collect sales tax on the entire charge [FN 7] when they purchase tangible personal property and deliver the property to customers.

[FN 1] The Gross Income Tax Act was repealed effective January 1, 2003.

[FN 2] Uniform Commercial Code, Sales, IC 26-1-2-308

[FN 3] LOF 97-0379; 99-0423; 01-0057; 01-0215

[FN 4] Differences in stated and actual charges are significant if they are consistently in excess of actual and imply a planned attempt at consequential profit.

[FN 5] e.g., charges for truck loading and unloading, installation of blocking material, pallet charges, services of seller's special handling equipment, demurrage, etc.

[FN 6] i.e., hauling companies

[FN 7] Cost of tangible personal property and separately stated hauling charge